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EXAMINER

SHINGLES, KRISTIE D

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANDREI PONOMARENKO

Appeal 2009-005734
Application 10/066,033
Technology Center 2400

Before JOHN C. MARTIN, MAHSHID D. SAADAT,
and CARL W. WHITEHEAD, JR., *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 10-30, which constitute all the claims pending in this application. Claims 1-9 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse and enter a new ground of rejection within the provisions of 37 C.F.R. § 41.50(b).

STATEMENT OF THE CASE

Appellant's invention relates to a system for managing and updating a configuration database for a network element. The network element includes several managed objects. The managed objects represent logical representations that can be configured and modified through transactions executed by network management software. The configuration management system includes a database manager that maintains a database file and a transaction log file. Each managed object includes an object reference key and a storage location pointer. Logical dependencies among objects are maintained through the linking of storage location pointers in the objects. Actions that modify an object are stored in the database file and the transaction log file. The present state of an object is stored by the database management system. In the event of an abort condition, the most recent configuration state of the network element is restored by re-applying the transactions stored in the transaction log file, and resolving the pointer links contained in the affected managed objects. (Abstract.)

Claim 10, which is illustrative of the invention, reads as follows:

10. A system of managing a configuration database within a network management program for a SONET ring network, the system comprising:

a plurality of managed objects representing logical representations of network entities that can be configured and modified through transactions executed by the network management program, wherein one or more of the managed objects include an object reference and a storage location pointer to another of the managed objects, the another of the managed objects being accessed by a combination of the object reference and the storage location pointer associated with the one or more of the managed objects;

an agent process that receives transaction commands from a command handler;

a database manager that receives the transaction commands from the agent process;

a database file that stores commands from the database manager; and

a transaction log file that stores actions included within transactions issued by the database manager.

The Examiner relies on the following prior art in rejecting the claims:

Axberg	US 6,009,466	Dec. 28, 1999
Traversat	US 6,115,715	Sep. 5, 2000
Davis	US 6,260,062 B1	Jul. 10, 2001

Claims 10-12 and 21 stand rejected under 35 U.S.C. § 103(a) as obvious over Axberg in view of Davis.

Claims 13-20 and 22-30 stand rejected under 35 U.S.C. § 103(a) as obvious over Axberg in view of Davis, and further in view of Traversat.

Rather than repeat the arguments here, we make reference to the Briefs (the Amended Appeal Brief (App. Br.) filed Dec. 3, 2007, replacing Appeal Briefs filed Jan. 31, 2006, Apr. 26, 2006, and Aug. 30, 2007, and Reply Brief (Reply Br.) filed May 5, 2008) and the Answer (mailed Mar. 13, 2008) for the respective positions of Appellant and the Examiner. Only those arguments actually made by Appellant have been considered in this

decision. Arguments that Appellant did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE

Claims 10, 16, and 23 are independent claims. Claims 11-15 and 21 depend from claim 10, claims 17-20 and 22 depend from claim 16, and claims 24-30 depend from claim 23. With respect to claim 10, Appellant argues, *inter alia*, that Axberg does not disclose a managed object wherein

one or more of the managed objects include an object reference and a storage location pointer to another of the managed objects, the another of the managed objects being accessed by a combination of the object reference and the storage location pointer associated with the one or more of the managed objects.

See App. Br. 19. With respect to claims 16 and 23, Appellant asserts, *inter alia*, that Axberg does not meet the claim requirement for “managing” a configuration database within a network management program. *See* App. Br. 24, 27. Appellant further asserts that neither Davis nor Traversat cures the deficiencies of Axberg. *See* App. Br. 19, 25, 28.

Therefore, Appellant’s arguments present us with the following dispositive issue regarding claim 10: Does Axberg, in combination with Davis and/or Traversat render the claim obvious by disclosing a managed object wherein

one or more of the managed objects include an object reference and a storage location pointer to another of the managed objects, the another of the managed objects being accessed by a combination of the object reference and the storage location pointer associated with the one or more of the managed objects,

as recited in claim 10?

FINDINGS OF FACT (FF)

1. Axberg discloses a storage network management program that includes a configuration planning portion for planning the configuration of a network of storage devices (col. 4, ll. 10-15).

2. Axberg discloses that the configuration planning portion may plan the network before it is physically connected together or may be used for adding to or altering an existing storage network (col. 7, ll. 15-20).

3. Axberg discloses a network management system that is usable for storage device networks comprising a wired local area network using an IBM Token Ring Protocol and also usable with other network devices, other communications media, and other protocols (col. 4, ll. 28-32; col. 16, ll. 14-17, 29-39).

4. Axberg discloses a port object which includes a reference to the object for the physical device associated with the port and a port number associated with the port (col. 9, ll. 12-15).

PRINCIPLES OF LAW

Section 103 forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007).

“The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.” 35 U.S.C. § 112, ¶ 2.

“We do not think a rejection under 35 U.S.C. § 103 should be based on . . . speculations and assumptions. . . . [I]t is essential to know what the claims do in fact cover.” *In re Steele*, 305 F.2d 859, 862 (CCPA 1962).

The failure to provide explicit antecedent basis for terms does not always render a claim indefinite. If the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite. MPEP § 2173.05(e); *Energizer Holdings, Inc. v. Int’l Trade Comm’n*, 435 F.3d 1366 (Fed. Cir. 2006) (holding that “anode gel” provided by implication the antecedent basis for “zinc anode”).

“The reviewing tribunal must determine whether a person experienced in the field of the invention would understand the scope of the claim when read in light of the specification.” *Energizer*, 435 F.3d at 1369.

ANALYSIS

Claims 10-15 and 21

The Examiner has not responded to Appellant’s contention regarding the recited managed objects in the Answer (Ans. 7-8) other than to repeat the grounds for rejection (Ans. 3). In an Advisory Action dated October 4, 2005, and referenced by Appellant (App. Br. 19) the Examiner recognized that a “pointer” is a memory location where an object is stored and relies on the port objects disclosed by Axberg, which include a reference to an associated physical device object, to assert that that reference to a physical device is the functional equivalent of a “pointer.”

We note that claim 10 recites “a storage location pointer,” which unambiguously requires that the pointer identify storage, i.e., memory, location. This reading of “pointer” is further supported by an express

definition of “pointer” in Appellant’s Specification (Spec. 11:17-18). In that regard, Axberg’s port object identifies the physical device with which the port is associated (FF 4), but Axberg does not disclose identifying the device by a pointer to its memory location. We agree with Appellant’s implicit argument that a corresponding physical device identification and a memory location pointer are not the same thing. Therefore, we conclude that Axberg does not disclose that

one or more of the managed objects include an object reference and a storage location pointer to another of the managed objects, the another of the managed objects being accessed by a combination of the object reference and the storage location pointer associated with the one or more of the managed objects because Axberg does not disclose a “storage location pointer.” We further find no disclosure in Davis or Traversat, or any findings by the Examiner that would cure this deficiency in Axberg. Accordingly, we find that claims 10-15 and 21 are improperly rejected as obvious under 35 U.S.C. § 103(a) because the Examiner has failed to present a *prima facie* case for the obviousness of base claim 10.

Claims 16-20 and 22-30

Reviewing the arguments made for the patentability of claims 16 and 23 (App. Br. 24-25, 27-28; Reply Br. 4-5), we note that both claims recite the term “managed transactions” with no clear antecedent basis in the claims. Although a lack of antecedent basis for a term in a claim does not render the claim *per se* indefinite under 35 U.S.C. § 112, second paragraph, *see Energizer*, 435 F.3d 1366, such a lack of antecedent basis may render a claim so ambiguous as to be impossible to construe, and therefore indefinite under 35 U.S.C. § 112, second paragraph.

Appellant has cited to the Specification at page 11, lines 9-20, and to Figures 2A and 2B, as providing support for the limitations containing this phrase in claim 16 (App. Br. 9) and claim 23 (App. Br. 11-12). We are unable to locate any disclosure in that portion of the Specification for defining “managed transactions.” The Specification contains references to “transactions” and to “managed objects” which are accessed by “object reference information and pointer information” in other “managed objects.” *See, e.g.*, Spec. 11: 9-20. However, we find no reference to “managed transactions” which are accessed by “object reference information and pointer information” in “managed objects” anywhere in the Specification or the originally filed claims. We note that the phrase “the managed transactions” first appears in the prosecution history in an Amendment filed April 7, 2005, by way of amendment to claim 16 and the introduction of new claim 23. That Amendment does not provide any additional clarification as to the meaning of “managed transactions.”

In the absence of any antecedent basis in the claims or guidance from the Specification as to the meaning of “the managed transactions” which are accessed by “object reference information and pointer information” in “managed objects,” we find that the scope of meaning to be attributed to claims 16 and 23 is not reasonably determinable.

Accordingly, for independent claims 16 and 23 and dependent claims 17-20, 22, and 24-30, the existing prior art rejections must be reversed *pro forma* because they are necessarily based on speculative assumptions and inferences as to the meaning of the claims. *See Steele*, 305 F.2d at 862-63. Furthermore, we enter a new ground of rejection for claims 16-20 and 22-30 under the second paragraph of 35 U.S.C. § 112 as being indefinite, pursuant

to our authority under 37 C.F.R. § 41.50(b). It should be understood, however, that our decision in this regard is based solely on the indefiniteness of the claimed subject matter and does not reflect the adequacy or the inadequacy of the prior art evidence applied in support of the rejection before us. Once definite claims are presented, the Examiner is free to apply the same, different, or additional prior art if the Examiner so chooses.

CONCLUSION AND ORDER

On the record before us, we reverse the rejection of claims 10-15 and 21 under 35 U.S.C. § 103(a). We *pro forma* reverse the outstanding rejections of claims 16-20 and 22-30 under 35 U.S.C. § 103(a) and enter a new ground of rejection of claims 16-20 and 22-30 under 35 U.S.C. § 112, second paragraph.

This decision contains new grounds of rejection pursuant to 37 C.F.R. § 41.50(b). Section 41.50(b) provides that “[a] new ground of rejection . . . shall not be considered final for judicial review.”

Section 41.50(b) also provides that Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record.

37 C.F.R. § 41.50(b).

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1).

REVERSED
37 C.F.R. § 41.50(b)

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